IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B.CRIMINAL MISC. PETITION NO. 27/2006
(Naresh Jain Vs. The State of Rajasthan & Anr.)

Date of Order : August 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. U.S.Gehlot for the petitioner.
Mr. Ashok Upadhyay, public prosecutor.
Mr. Pushpendra Singh for the non-petitioner No.2.

BY THE COURT:-

By the instant criminal miscellaneous petition under Section 482 Cr.P.C. the petitioner has assailed the order dated 26.9.2005 passed by Chief Judicial Magistrate, Udaipur (for short 'the trial court' hereinafter) whereby the application filed by the petitioner under Section 258 Cr.P.C. was dismissed.

I have heard learned counsel for the parties Carefully gone through the order passed by the trial court.

It is contended by the learned counsel for the petitioner that the petitioner signed three cheques and gave to the non-petitioner No.2. Those cheques were given as security. However, when the cheques were presented to the Bank, they

were dishonoured and thereafter statutory notice demanding the cheque amount was served on the petitioner. The petitioner failed to make payment of the cheque amount within statutory period and therefore, a complaint u/s 138 of the Negotiable Instruments Act, 1881 (for short 'the Act' hereinafter) was filed by the non-petitioner No.2 against the petitioner before the trial court. By an application, the petitioner sought dropping of the proceedings u/s 258 Cr.P.C.

Section 258 Cr.P.C. provides that in any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

From a plain reading of the language of Section 258 Cr.P.C., it is clear that only a case instituted otherwise than upon complaint, benefit of Section 258 Cr.P.C. can be given to the accused. The instant case has been instituted on a complaint filed by the non-petitioner under Section 138 of the Act. In the circumstances, therefore, the provisions of Section 258 Cr.P.C.

have no application in the present case. Even otherwise, the trial court by a well reasoned order dismissed the application noticing that Section 258 Cr.P.C. has no relevancy in the case instituted on a complaint by the non-petitioner No.2. In the circumstances, therefore, it cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court.

The petition has no force and it is therefore, dismissed. Stay petition also stands dismissed.

(H.R.PANWAR),J.

Gopal/rp